

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PACIFIC COAST MARITIME, INC., a
Washington corporation, HARLEY
MARINE FINANCING, LLC, a
Delaware limited liability company,

Plaintiffs,

v.

EAST WEST SEAFOODS, LLC, a
Washington limited liability company, *in*
personam, and F/V PACIFIC PRODUCER,
O.N. 250021, her engines, appurtenances,
tackles, and gear, *in rem*,

Defendants.

IN ADMIRALTY

NO. 3:23-cv-05011-JCC

[PROPOSED]

**ORDER GRANTING *EX PARTE*
MOTION FOR APPOINTMENT
OF SUBSTITUTE CUSTODIAN
AND APPOINTING MARINE
LENDERS SERVICES, LLC AS
SUBSTITUTE CUSTODIAN**

On January 5, 2023, plaintiffs Pacific Coast Maritime and Harley Marine Financing filed their *Verified Complaint* herein, requesting that the vessel PACIFIC PRODUCER, Official Number O.N. 250021, its engines, machinery, and other appurtenances, etc., be condemned and sold to pay plaintiffs' claims and for other proper relief.

1. It is anticipated that the Clerk of the Court will be authorized by this Court to issue a Warrant of Arrest commanding the United States Marshal for this District to arrest and take the defendant vessel into custody and to detain it in custody

[PROPOSED] ORDER RE: MOTION FOR SUB.
CUSTODIAN - 1
CASE NO. 3:23-cv-05011-JCC

ATTORNEYS AT LAW
BAUER MOYNIHAN & JOHNSON LLP
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SEATTLE, WASHINGTON 98121
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1 until further order of this Court.

2 2. It is contemplated that the United States Marshal will seize the defendant
3 vessel forthwith. Custody by the U.S. Marshal requires the services of one or more
4 keepers at a charge of at least \$1,200.00 per day per keeper, not including charges for
5 moorage and the other services usually associated with safekeeping vessel similar to
6 the defendant vessel.

7 3. The defendant vessel is currently moored in the Foss Waterway in
8 Tacoma, Washington at 1510 E D Street (the old "J M Martinac Shipbuilding
9 Corporation"). After arrest, it may be necessary to move the vessel to other suitable
10 moorage. It may also be necessary to offload any remaining cargo from the vessel.

11 4. Plaintiff is agreeable to allowing Marine Lenders Services, LLC to
12 assume the responsibility of safekeeping said vessel and Marine Lenders Services,
13 LLC has consented to act as custodian of the vessel until further order of this Court.
14 Fees and expenses to be charged by Marine Lenders Services, LLC will be
15 substantially less than the cost of leaving the defendant vessel in the custody of the
16 U.S. Marshal.

17 5. Buck W. Fowler Jr, Managing Member by declaration, has stated that
18 Marine Lenders Services, LLC has no interest in the outcome of this lawsuit, can
19 arrange for adequate facilities and supervision for the proper safekeeping of the vessel,
20 and has obtained the legal liability insurance through Great American (Policy No.
21 CL1932503366) with policy limits of not less than \$2,000,000 which is expected to be
22 adequate to respond in damages for loss of or injury to the defendant vessel resulting
23 from their legal liability or for damages sustained by third parties due to any acts,
24 faults or negligence of the substitute custodian. Further, in his declaration, Buck W.
25 Fowler Jr, on behalf of Marine Lenders Services, LLC has agreed to accept custody of
26 the vessel and its equipment in accordance with the terms of this Order.

1 6. In consideration of the U.S. Marshal's consent to the appointment of
2 Marine Lenders Services, LLC as substitute custodian, plaintiff agrees to release the
3 United States and the U.S. Marshal from any and all liability and responsibility arising
4 out of the care and custody of the defendant vessel and its equipment, from the time
5 the U.S. Marshal transfers custody of the vessel over to the substitute custodian, and
6 plaintiff further agrees to indemnify and hold the United States and the U.S. Marshal
7 harmless from any and all claims whatsoever arising out of the substitute custodian's
8 possession and safekeeping of the vessel.

9 NOW, THEREFORE, THE COURT ORDERS:

10 1. That upon the seizure of the defendant vessel, the PACIFIC
11 PRODUCER, O.N. 250021, its engines, tackle and other appurtenances pursuant to the
12 Warrant of Arrest, the U.S. Marshal is authorized and directed to surrender custody of
13 the vessel to Marine Lenders Services, LLC as substitute custodian herein, and that
14 upon such surrender, the Marshal shall be discharged from his/her duties and
15 responsibilities for the safekeeping of the vessel and held harmless from any and all
16 claims arising out of said custodial services.

17 2. That Marine Lenders Services, LLC, as substitute custodian, shall see to
18 and be responsible for the safekeeping of the defendant vessel. The duties of the
19 substitute custodian shall include, but are not limited to, ensuring that there is
20 adequate, safe moorage for the vessel. The substitute custodian is not required to have
21 a person live on board the vessel, but an officer or authorized agent of the substitute
22 custodian shall go on board the vessel, from time to time to carry out the duties of
23 substitute custodian. No other person shall be allowed to enter on the vessel except as
24 provided for herein or as otherwise expressly authorized by order of this Court.

25 3. That the defendant vessel may be moved by tug or other safe means from
26 its present moorage to adequate, safe moorage. The substitute custodian shall notify

1 the office of the U.S. Marshal that the vessel is to be moved and shall again notify the
2 office of the U.S. Marshal when the vessel has been moved. Once the vessel has been
3 moved to suitable moorage, the defendant vessel shall not be moved again without
4 further order of the Court.

5 4. That Marine Lenders Services, LLC, as substitute custodian, may if
6 necessary offload any cargo aboard the vessel and arrange for storage of the same at a
7 suitable storage facility. The substitute custodian shall notify the office of the U.S.
8 Marshal prior to engaging in any such offloading of cargo and again upon the
9 completion of any such offloading.

10 5. That Marine Lenders Services, LLC, as substitute custodian, with
11 plaintiffs' approval, may permit the Vessel to conduct normal operations while under
12 Marine Lenders Services LLC custodianship, including fueling, loading, discharging,
13 cargo handling, repairs, and vessel movement within the District, but at the risk and
14 expense of the Vessel's interests. The substitute custodian Marine Lenders Services,
15 LLC shall ensure that the operations of the Vessel conducted are normal port
16 operations, i.e., normal cargo operations, both discharging and loading, repair work,
17 fueling, and vessel movement, and that the Vessel always remains within the waters of
18 the District, unless and until otherwise ordered by the Court. The substitute custodian
19 shall notify the office of the U.S. Marshal prior to engaging in any such loading,
20 fueling and vessel movement and again upon the completion of such activity.

21 6. That Marine Lenders Services, LLC, as substitute custodian, may if
22 necessary offload any fuel and arrange for disposal of the same. The substitute
23 custodian shall notify the office of the U.S. Marshal prior to engaging in any such
24 offloading and again upon the completion of any such offloading.

25 7. That Marine Lenders Services, LLC, as substitute custodian, may, but is
26 not required to, retain a marine engineer familiar with the vessel and to take him or her

1 on board the vessel with authorized agents of Marine Lenders Services, LLC to assist
2 in the securing of the vessel.

3 8. That Marine Lenders Services, LLC, as substitute custodian, may, but is
4 not required to, remove those pieces of electronic equipment on board the vessel, if
5 any, which may be easily removed without damage to the vessel, and that such
6 removed electronic equipment shall be stored in a safe, secure storage pending further
7 Order of this Court.

8 9. That Marine Lenders Services, LLC, as substitute custodian, may, but is
9 not required to, retain such services as are necessary to clean the interior and / or
10 exterior of the vessel, remove food products with such services to be performed under
11 the supervision of the substitute custodian.

12 10. That plaintiffs shall arrange to pay charges for moorage of the vessel and
13 the fees, costs and legal liability insurance premiums of the substitute custodian and
14 shall reimburse the substitute custodian for such other costs as may be incurred in
15 conduction of the inventory of the equipment on board, in securing the vessel, in
16 having the vessel cleaned, in moving the vessel, and / or in offloading any cargo or
17 fuel from the vessel.

18 11. That subject to final approval by the Court, all fees, costs and expenses
19 incurred by plaintiffs or the substitute custodian pursuant to the terms of this Order
20 shall be deemed administrative expenses of the U.S. Marshal.

21 11. That plaintiff's attorney shall send a copy of this Order to the owner of
22 the defendant vessel at the last address known by plaintiffs, and to the address shown
23 on the record of the U.S. Coast Guard by Certified Mail, Return Receipt Requested.

24 IT IS FURTHER ORDERED that the substitute custodian may permit boarding
25 and inspection of the defendant vessel by marine surveyors, representatives of
26 plaintiffs, defendant and prospective purchasers in order to determine the vessel's

1 condition and value at a date and time convenient to the substitute custodian. All cost
2 of such boarding and inspections shall be paid by plaintiffs and shall be deemed
3 administrative costs herein. All persons entering on board the vessel shall execute a
4 waiver and release in the form attached hereto.

5 IT IS FURTHER ORDERED THAT all crew members shall remain on board
6 the defendant vessel and continue to operate and maintain all ship systems pending
7 further order of this Court.

8 It is further requested that the Clerk of this Court deliver three certified copies
9 of this order to the United States Marshal forthwith.

10
11
12 DATED this _____ day of _____, 2023
13
14

15 _____
16 HON. JOHN C. COUGHENOUR
17 UNITED STATES DISTRICT JUDGE

18 Presented by:

19 /s/Thomas G. Waller
20 Thomas G. Waller, WSBA No. 22963
21 /s/Donald K. McLean
22 Donald K. McLean, WSBA No. 24158
23 Attorneys for Plaintiffs
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